

# ARIZONA JUDICIAL COUNCIL'S COMMITTEE ON SUPERIOR COURT

## MINUTES

For Meeting held Friday, September 27, 2002  
State Courts Building, Conference Rooms 345 A & B  
Phoenix, AZ

### MEMBERS PRESENT:

Hon. Roger Kaufman, Chair  
Hon. Silvia Arellano  
Hon. Mark Armstrong  
Hon. James Chavez  
Ms. Deborah Dyson  
Hon. Patricia Escher  
Hon. Douglas Holt  
Hon. Brian Ishikawa  
Hon. Michael Jeanes  
Hon. Gloria Kindig  
Hon. Kirby Kongable  
Mr. Marty Krizay  
Hon. Kenneth Lee  
Hon. Stephen McCarville  
Hon. Margaret Maxwell  
Hon. Leslie Miller  
Hon. Fred Newton  
Mr. Marcus Reinkensmeyer  
Hon. Nanette Warner  
Hon. Raymond Weaver

### MEMBERS ABSENT:

Mr. Gary Krcmarik  
Hon. Denise Lundin  
Mr. Charles W. Wirken, Esq.

### GUESTS:

Mr. David Sands  
Mr. George Diaz, Jr.  
Ms. Judith Connell  
Ms. Susan Luebke  
Ms. Nancy Swetnam  
Mr. George Schade, Jr.  
Mr. Ted Wilson  
Ms. Susan Pickard  
Ms. Karen Kretschman

### STAFF:

Ms. Theresa Barrett  
Ms. Deborah Orr

### REGULAR BUSINESS

**Welcome and Opening Remarks . . . . . Hon. Roger Kaufman**

Judge Roger Kaufman, Chair, called the meeting to order at 10:05 a.m. He welcomed everyone and acknowledged new members. All those present introduced themselves.

In honor of their dedicated service and in appreciation for their commitment to the Committee on Superior Court members recognized: Judge Monica Stauffer (5/99 - 4/02) and Commissioner Nancy Lewis (7/96 - 4/02). Judge Kaufman requested the minutes reflect the Committee's appreciation. There were no objections.

**Approval of Minutes - April 26, 2002 ..... Hon. Roger Kaufman**

The minutes from the April 26, 2002 meeting were previously distributed electronically. Revisions and corrections received from members prior to the meeting were incorporated by staff. Copies of the revised minutes were provided for review at the meeting.

**MOTION: To approve the minutes for the April 26, 2002 meeting as distributed. Seconded and passed unanimously. COSC-02-009**

*Note: Following approval of the minutes, Judge Kaufman announced a change to the meeting agenda. Specifically, to provide guidance to the legislative officers, the discussion of Senate Bill 1001 & Associated Rule Petitions would occur during lunch.*

**BUSINESS ITEMS/POTENTIAL ACTION ITEMS**

**Review of Legislative Proposals ..... Mr. David Sands & Mr. George Diaz Jr.**

David Sands, Legislative Officer for the Administrative Office of the Courts (AOC), described the procedures that would be followed for review of the legislative proposals before the Committee and the voting options. Those options include: 1) To include the proposal in the judiciary's legislative package, 2) NOT to include the proposal in the legislative package, and 3) Include the proposal in the legislative package with amendments.

Committee members were provided with a voting device for use in conjunction with the Options Technology voting program. The votes were automatically tallied and the results displayed on a screen.

For each proposal, either Mr. David Sands or Mr. George Diaz, Jr. provided a brief overview of the proposal, highlighted major issues, reported the position taken by other committees that had reviewed the proposal and then opened the floor for discussion. Mr. Sands and Mr. Diaz prepared cover sheets for all proposals submitted to them for the upcoming legislative session. Revised handouts were provided to members at the meeting.

Mr. Sands and Mr. Diaz provided information on the following legislative proposals:

**03-12 Domestic Violence Definition:** Mr. Bob James, Judicial Services Administrator, Maricopa Superior Court, and member of Committee on the Impact of Domestic Violence in the Courts (CIDVIC), facilitated discussion of the changes included in the proposal.

Mr. James indicated currently A.R.S. §12-1809 allows a judge to issue an Injunction Against Harassment (IAH) to persons in a "dating relationship." However, the term "dating relationship" is not defined which can lead to inconsistent practices throughout the court system. Additionally, IAH orders that arise out of a "dating relationship" must be served by law enforcement at no charge per A.R.S. §11-445. Fees may be assessed for all other IAH orders. Orders of Protection issued under A.R.S. §13-3602 are all served at no charge by law enforcement. This proposed legislation would provide definition for "dating relationship" and remove "dating relationship" from the IAH statute (A.R.S. §12-1809) and place it in A.R.S. §13-3601. The advantages are: 1) a single definition of "dating relationship" and 2) place all orders which must be served at no cost by law enforcement under one statute with one set of guidelines.

Mr. James indicated that law enforcement had voiced concern regarding waiving service fees for injunctions against harassment. Therefore, the Committee felt it was necessary to be consistent and include the dating relationship under the same protections as other relationships identified in statute. Furthermore, CIDVIC contends the IAH has become a basic civil remedy.

Therefore, when dealing with a couple involved in an intimate relationship this type of relationship should come under the protection afforded by an OOP.

CIDVIC's proposal will create a separation between statutes involving "family or intimate partner" abuse and abuse between persons with no family or intimate relationship. Consolidating all of the "family or intimate partner" definitions into one statute will provide a distinctive category of cases. It affirms that cases involving intimate partners are considered a separate category from cases strangers or persons with no family or intimate relationship. In others words, the "barking dog" or "noisy neighbor" cases will not be lumped together with the "spouse abuse" or "date assault" cases. Some reprogramming of data collection systems will need to be reprogrammed to separate IAH from "domestic violence" reporting.

Questions and comments included the following:

- < David Sands indicated the proposed language is being worked on by CIDVIC. Members should not focus on specific verbiage rather the concept.
- < Judge Warner questioned how the proposal pertains to a child victims. Specifically, will it impact jurisdictional issues? Mr. James indicated CIDVIC does not expect any impact on the Juvenile Court because they are not dealing with the child as a defendant.
- < Judge Armstrong questioned whether any thought had been given to changing language from present tense to past tense to cover the "break-up" or "recently separated" type of case. Mr. James indicated CIDVIC's original proposal did include both past and present language and was lifted from 42 USC 3796 GG-2. He stressed that it was CIDVIC's intent to mirror the Federal code.
- < Judge Weaver requested clarification whether the length and type of relationship was a subjective decision. Mr. James indicated the decision was at the discretion of the judicial officer.

**MOTION: Judge Miller recommended that dating relationship be defined by VAWA as: "the term 'dating violence' means violence committed by a person--**

**(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and**

**(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:**

**(i) the length of the relationship;**

**(ii) the type of relationship; and**

**(iii) the frequency of interaction between the persons involved in the relationship.'".**

**Motion seconded. Motion unanimously approved. COSC-02-010**

**\*FINAL VOTE ON 03-12:THE COMMITTEE VOTED 0-0-20 TO INCLUDE AS AMENDED.**

**03-01 Conciliation Services Fee:** Generates additional revenue to carry out the purposes of Superior Court conciliation services in counties that have established a conciliation court by adding maternity and paternity cases to the present types of family law cases in which, when filing initial pleadings, litigants pay a \$65 fee under A.R.S.§12-284(E) in addition to other statutory filing fees.

Following a brief overview of the proposal, the following comments were offered for consideration:

- < The money is needed to support conciliation services because much of the funds generated by the fee are used for mediation, visitation and custody disputes in paternity cases. Presently this group is not paying the fee to help support the services.
- < Mr. Michael Jeanes pointed out that the proposal does not increase the fee, rather expands the population to which the fee is applied. Accordingly, he questioned whether it would be subject to Prop 108. Mr. Sands indicated since the money is used exclusively to fund Conciliation Courts and does not flow into the General Fund it would **not** be a prop 108 bill.
- < Will this legislation propose a barrier to establishing paternity by increasing the fee to be paid? Current fee for a paternity case is a \$95 base fee with \$15 document storage and retrieval fee (\$106). Some counties also charge local fees. Accordingly, the total fee for Maricopa is \$166 (with the additional fee it would be \$231) and in most other counties the new total fee would be \$171.
- < Judge Armstrong indicated this proposal is important to Maricopa to ensure they can maintain the level of services they need in conciliation services. It was voted on by the entire bench to be included in the legislative package.
- < Judge Warner indicated that paternity cases comprise a large percentage of cases handled by Pima County's Conciliation Court.

**\*FINAL VOTE ON 03-01: THE COMMITTEE VOTED 20-2-0 TO INCLUDE.**

**03-02 Protection of Judges' Personal Information:** Adds Justices of the Supreme Court, Judges of the Court of Appeals, Judges and Commissioners of the Superior Court and Municipal Court Judges to the list of persons who may request redaction of records maintained by the county recorder, county assessor, county treasurer and the Department of Transportation. Public availability of personal information potentially exposes judges and their families to harm from disgruntled litigants and persons dissatisfied with court rulings.

Discussion followed. Comments and issues mentioned include the following:

- < This proposal has been submitted in the past and has been turned into a debate in Committee whether everyone's information should be sealed or redacted.
- < Should judges that run for election and justices of the peace be included in this proposal?
- < Judge Armstrong indicated this bill was 1 of 7 proposed by Maricopa County.
- < Last year this proposal died because Motor Vehicle attached a cost to implementation. It was suggested in tough economic times this approach would likely be taken again.
- < Judge Newton questioned how effective this proposal would be as those seeking to obtain this type of information have other ways to locate it.

**\*FINAL VOTE ON 03-02: THE COMMITTEE VOTED 7-14-0 TO NOT INCLUDE.**

**03-03 Judges' Retirement Age:** Extends from 70 to 75 years of age the present mandatory retirement age for justices and judges of courts of record prescribed by Article VI, sections 20 and 39 of the Arizona Constitution. Courts of record are the supreme court, the court of appeals and the superior court.

Mr. Sands noted that this bill was introduced last year. The Arizona Judicial Council voted to take no position on this proposal. The bill went forward without the judicial department's opinion and went through only one committee.

**\*FINAL VOTE ON 03-03: THE COMMITTEE VOTED 8-12-0 TO NOT INCLUDE.**

**03-04 Property Tax Appeal Time Limit:** Eliminates the 270-day time period set forth in A.R.S. §42-16212 within which the court must hear an appeal from a decision of the county assessor regarding valuation of classification of property. The Arizona Rules of Civil Procedure already control the expeditious processing of cases by establishing a time period after which a case may be dismissed if not prosecuted.

Comments on this proposal included:

- < Judge Kaufman pointed out this rule actually gives 60 extra days over the statute. Rule 38.1 allows 270 days in which to file a Motion to Set and Certificate of Readiness. If it is not filed then the case goes on the inactive calendar for dismissal at 330 days.
- < Judge Escher suggested this proposal could have ambush potential (i.e., used against the Court as another instance of where the Court wants to slow down processing).
- < Judge Armstrong indicated this proposal was submitted by Judge Katz, Tax Court. Judge Katz's argues since the appeal process is waived in 99% of cases, this proposal will enable the court to bring case processing times for tax cases in line with other civil cases.

**\*FINAL VOTE ON 03-04: THE COMMITTEE VOTED 9-12-0 TO NOT INCLUDE.**

**03-05 Preparatory Release For Inmates Sentenced To Probation:** Allows an inmate sentenced to probation in lieu of community supervision to be released at the discretion of the Director of the Department of Corrections (DOC) up to 90 days prior to the end of a prison sentence in the same manner as are inmates sentenced to imprisonment and community supervision.

Comments and issues mentioned include the following:

- < Mr. Diaz indicated DOC supports this proposal.
- < Judge Kaufman indicated this proposal addresses the lack of a mechanism to work around situations in which there is a period of little or no supervision following release from prison. This procedural problem becomes significant when you have pleas to multiple offenses. For instance, if a judge wants to put a person in a treatment program immediately following release, if community supervision is waived in order to get the individual put immediately on probation then that person is not eligible for early release. Typically the defendant will not agree to this arrangement.
- < Judge Miller asked for clarification whether this proposal would include aggravated DUI. The consensus was that this proposal would not apply to these individuals.

**MOTION: Judge Miller recommended that the proposal include an amendment to specifically exclude DUI cases in which the individual is serving a term of incarceration in the DOC as a condition of probation for aggravated DUI. Motion seconded. Motion approved. COSC-02-011**

**\*FINAL VOTE ON 03-05: THE COMMITTEE VOTED 13-0-9 TO INCLUDE AS PROPOSED WITH DISTINCTION TO BE MADE TO MINORITY VOTE.**

**03-06 Parent Education Program Fee:** Increases from \$30 to \$40 the maximum fee paid by a parent for attending the Domestic Relations Education on Children's Issues Program. Completion of this so-called parent education program is required of most parents with minor children involved in an action for dissolution of marriage, legal separation and annulment or

in a paternity case in which the court is requested to determine custody, parenting time or child support.

Mr. Sands explained that these are programs administered by the presiding judge of each county. Although the Supreme Court sets minimum standards for the programs, the county determines how to implement the program (i.e., hire discrete vendors or hire in-house staff). The fee in each county is not necessarily set at the maximum. In Maricopa County the maximum is charged. However, due to no shows, instructor fees and meeting other program costs, the system is being taxed.

Questions and comments included the following:

- < Due to impending budget cuts, Judge Armstrong indicated this proposal is strongly supported by the Maricopa bench. He pointed out that the current maximum has been in place for at least five years and has not been increased to keep in step with inflation. Furthermore, a county is not required to increase their fee, rather the proposal simply places a maximum on the amount.
- < Judge Warner indicated she was not aware of a problem in Pima County. She pointed out that that many individuals going through a divorce already have strained finances and, accordingly, asked members to take this into consideration when making their decision.
- < It was noted that the fee could be waived.

**\*FINAL VOTE ON 03-06: THE COMMITTEE VOTED 18-3-0 TO INCLUDE.**

**03-07 Juror Compensation Task Force:** Establishes a juror compensation task force to review and recommend changes to the juror compensation statutes, rules and procedures and other related issues.

Discussion:

- < Ms. Barrett noted that the creation of a task force is part of the recommendations made by the Committee to Study Jury Practices and Procedures. The proposal offered mirrors the Committee's recommendation and therefore compliments their efforts.
- < Mr. Diaz pointed out this proposal keeps the issue of juror pay in the minds of legislators and provides the opportunity to educate the public.
- < Judge Newton was in favor of supporting the proposal with an amendment to place more public members and fewer court employees as task force members.

**MOTION: Amend the proposal to reflect a task force composition with increased public membership. Motion seconded. Motion unanimously approved. COSC-02-012**

**\*FINAL VOTE ON 03-07: THE COMMITTEE VOTED 1-2-19 TO INCLUDE AS AMENDED.**

**03-08 Administration of Water Adjudication Fees:** Memorializes in statute present practice regarding the administration and management of filing fees required by A.R.S. § 45-254 to be paid when filing a claimant's statement in a general adjudication of water rights. The proposed law clarifies that fees are administered by the clerk of the superior court in the county where the adjudication is maintained and that monies earned on invested fees are credited to the fee account to be used exclusively for expenses related to conduct of the adjudication, as approved by the court.

Mr. George Schade, Jr., Special Master for the Arizona General Stream Adjudication, addressed the Committee and noted that the proposal does not increase or impose any fees. Rather, it provides for the proper and correct management of the claimant's fees.

There was no discussion.

**\*FINAL VOTE ON 03-07: THE COMMITTEE VOTED 19-2-0 TO INCLUDE.**

**03-09 Parental Responsibility for Juvenile Costs:** Requires for any child who is referred to the juvenile court and is placed in foster care or requires shelter care or treatment that the juvenile court inquire into the financial ability of the child or the child's parent to pay for foster care, treatment or education and to order monthly payments if the ability exists.

**MOTION:** Commissioner Maxwell moved to exclude guardians from those ordered responsible. Motion seconded. Motion approved. COSC-02-013

Comments included the following:

- < Mr. Diaz informed members that this statute existed previously but was inadvertently removed.
- < Judge Warner indicated she was reluctant to remove guardians because they can be the recipients of benefits (i.e., social security on behalf of the child, TANF, etc.).

**\*FINAL VOTE ON 03-09: THE COMMITTEE VOTED 16-0-6 TO INCLUDE, WITH A NOTE TO AJC TO CONSIDER MINORITY POSITION.**

**03-10 Drug Court; Appropriations:** Appropriates an unspecified amount from the state general fund to the Administrative Office of the Court in FY04 and FY05 for the purpose of funding juvenile and adult drug courts. The funds would be limited in use to staff, contract services for treatment, equipment for programs that have entrance criteria agreed upon by the presiding judge and the prosecutor.

Mr. Marty Krizay informed members that many drug court programs are on the edge of becoming extinct due to lack of funding. He argued that there needs to be a dedicated funding source in order to keep drug courts in Arizona afloat.

Judge Miller echoed Mr. Krizay's comments. She suggested the benefit of this proposal would be to keep the drug court programs in the minds of legislators and remind them of the on-going need for funding.

**\*FINAL VOTE ON 03-10: THE COMMITTEE'S VOTE WAS SPLIT 11-11-0.**

*Judge Escher requested that the Committee's vote include a comment supporting drug courts, indicating that the Committee's concern is by setting money for drug courts aside it would cut funding to another court program due to budgetary shortfall. There were no objections.*

**03-11 Modification of Probation Supervision:** Authorizes the probation officer to modify the level of supervision for those juvenile and adult probationers placed on intensive probation under guidelines authorized by the Arizona Supreme Court. Currently the court holds this authority exclusively.

Comments included the following:

- < Judge Chavez would like to eliminate the paperwork but was concerned with giving discretion to the probation officer.
- < Mr. Marty Krizay indicated his fellow Chief Probation Officers could not recall ever having a modification denied. Furthermore, probation officers currently move within levels of standard supervision and this is basically what they are advocating for with intensive probation.
- < Judge Armstrong clarified that this proposal only deals with levels within intensive probation not changing a probationer's level from intensive to standard. This would still remain a judicial decision.

**\*FINAL VOTE ON 03-11: THE COMMITTEE VOTED 18-4-0 TO INCLUDE.**

### **Break for Lunch**

#### **Senate Bill 1001 & Associated Rule Petitions ..... Hon. Roger Kaufman**

Judge Kaufman began the discussion by providing a brief review the Supreme Court opinions that have forced Arizona lawmakers to change the state's death penalty sentencing system. He explained

the result of the legislature's efforts was seen in Senate Bill 1001, which now requires juries to determine all three parts of a capital punishment case: guilt, whether aggravating circumstances exist warranting a death sentence and whether to impose the death penalty.

Judge Kaufman informed members he was aware of at least five new bills that would be submitted this session to the legislature dealing with sentence enhancers in criminal cases that do not involve the death penalty. Currently, Arizona law says the judge decides it. Alternatively, in *Apprendi v. New Jersey* it was argued this is unconstitutional under the Sixth Amendment.

Judge Kaufman indicated although the committee could not comment on what is now law he did feel it would be beneficial to provide input regarding what the position of Arizona courts should be with respect to all other cases dealing with aggravating circumstances.

- < Judge Miller questioned, why Judge Kaufman felt the application of *Apprendi* would be so broad. Judge Kaufman suggested he was concerned with how the court should deal with issues such as whether someone was on probation/parole and the lack of a rationale basis for accepting priors. His concern is the sheer volume of other aggravators—specifically, are we going to have two trials in a substantial percentage of our criminal cases? Should the judge sentence or will the jury sentence?
- < Judge Warner indicated she felt the committee should take a position that other aggravators should **not** go to the jury. She argued that members should strongly discourage jury sentencing in all criminal cases.
- < Judge Kindig indicated she was concerned about impaneling jurors. Specifically, she felt there would be less individuals willing to serve thus potentially creating biased juries.

Judge Kaufman informed members that one proposal being floated is to have any factor that increases a sentence determined by the jury. There is also a move to have juries do all sentencing. Finally, there are those that feel jurors should be instructed on potential punishments before deciding guilt or innocence. Judge Kaufman cautioned members that since



*Ring* and *Apprendi* have revived the debate on the issues he anticipates that this will be an important criminal justice issue in the upcoming the legislature.

**CONSENSUS: Members do not favor going to jury sentencing in all of cases where there are aggravators involved.**

In closing, Judge Kaufman encouraged members to go back to their jurisdictions and discuss this with their colleagues and forward ideas or suggestions to the Committee.

**Committee to Study Court Interpreter Issues ..... Hon. Sylvia Arellano**

Judge Arellano briefed members on the final report reviewing the four recommendations proposed by the Committee: Certification of Interpreters; Extensive Interpreter Training; Proposed Legislation and Court Rules that govern language interpreter use, conduct and professionalism; and the Establishment of a Judicial Interpreter's Commission to develop operating policies and provide oversight management.

Judge Arellano noted that start up costs would be \$135,000 and ongoing costs would be \$110,000, to include AOC staff, training, testing, monitoring, etc. She informed members, because the pool of interpreters in Arizona was not very large, these monies could not come from a user fee alone. Judge Arellano acknowledged that this was not the best climate to request money for a new program, however, a funding source other than an appropriation had not yet been identified.

Judge Kaufman commended Judge Arellano and the Committee on their outstanding work on this very important issue. Although this agenda item was presented as information only, and approval was not required, Judge Arellano indicated a vote of support would be appreciated.

**MOTION: Judge Miller moved to support the Committee to Study Court Interpreter Issues Report and recommend it be brought to legislative officers. Motion seconded. Motion unanimously approved. COSC-02-014**

**03-13 Age For Use of Confidential Intermediary:** Makes consistent with a legislative amendment in 2002 the law applicable to use of confidential intermediaries (A.R.S. § 8-134) by lowering from 21 to 18 years the age at which an adoptee, the progeny of a deceased adoptee or a biological sibling of an adoptee may use the services of a confidential intermediary (CI) to help determine the person's birth parent(s) and, if consent is given, to share identifying information or a personal contact. The 2002 amendment permits the adoptive parents of persons at least 18 to use these services and a CI may contact persons at least 18 years of age.

Mr. Sands indicated that this proposal was brought forward by Ms. Susan Luebke, Confidential Intermediary Program Coordinator, AOC. Ms. Nancy Swetnam noted that in the original passage of the legislation there was considerable debate regarding whether the age limit generally be 18 or 21. She noted the legislature at that time felt it should be 21 both for contact and initiation. However, this year the legislature decided to change part of the statute and not the other. Ms. Swetnam indicated she was advocating that there should be consistency in the statute.

There was no comments or suggestions.

**\*FINAL VOTE ON 03-13: THE COMMITTEE VOTED 18-1-0 TO INCLUDE.**

**Rule 26(c) ..... Hon. Barry Schneider**

Judge Schneider, a member of the State Bar Civil Practice and Procedure Committee, indicated that a proposal had been submitted by Senator Scott Bundgaard to amend Rule 26(c), Arizona Rules of Civil Procedure. This amendment was initially proposed as legislation but failed.

Judge Schneider argued that the proposed amendment would radically change the workings of Rule 26(c). He suggested the proposed amendment was aimed at the practice of issuing protective orders by stipulation among the parties before the court. The advocates of this proposal are against this practice and feel the public is being victimized by keeping this information in the dark.

Judge Schneider indicated the State Bar Civil Practice and Procedure Committee drafted a comment in opposition to the proposed amendment. In addition, under short notice, the Civil Department of the Maricopa County Superior Court also filed a comment in opposition to the proposed amendment.

Judge Schneider indicated he brought this issue forward to the Committee because he hoped that there could be a judicial response to the concerns that are raised by the proposed amendment. Judge Schneider indicated he was concerned because comments to the proposed rule change were primarily from a lawyer and client point of view rather than on the effect of the proposed amendment on the judiciary.

Copies of Maricopa's civil department judges comment were provided to members. Next, Judge Kaufman asked members if they felt they should express a view to AJC regarding this issue.

**MOTION: Judge Armstrong moved that the Committee join the comment of the Civil Department of the Maricopa County Superior Court in the matter of the petition to amend Rule 26(c) of Civil Procedure. Motion seconded. Motion unanimously approved. COSC-02-015**

**03-14 Deferred Retirement Option Plan:** Creates a Deferred Retirement Option Plan (DROP) for members of the Arizona State Retirement System, the Correctional Officer Retirement Plan and the Elected Official Retirement Plan.

Mr. Diaz indicated the final proposal came from Mr. Dave Byers, Administrative Director of the Courts. He then provided a brief overview of the plan. He informed members this plan is currently available to public safety retirement system employees.

Judge Miller indicated the Arizona Judges' Association was going to go forward with this proposal individually. However, it was felt if they moved forward only on behalf of judges that legislators would not be very sympathetic. In order to be better received, it was decided to bring in correctional officers and other state employees.

Rather than tying approval to an association with other groups, Judge Miller recommended supporting the Deferred Retirement Option Plan for elected officials and leave it to the AOC lobbyists to determine whether or not it is beneficial to remain associated with the state retirement fund and the Correctional Officer Retirement Plan.

Mr. Diaz indicated that correctional officers were the greatest supporters of this proposal last year.

**\*FINAL VOTE ON 03-14: THE COMMITTEE VOTED 17-5-0 TO INCLUDE.**

**Prioritization of Legislative Proposals ..... Mr. David Sands & Mr. George Diaz Jr.**

Having completed the initial review of each assigned proposal, Committee members were asked to identify priorities from those proposals that the Committee voted to include in the judiciary's legislative package. Each member was allowed three votes, if they wished, all three votes could be placed on one proposal. Judge Arellano and Judge Warner departed before the vote. The results of the remaining 20 members are displayed in the following table.

| PROPOSAL       | Votes for Priority |
|----------------|--------------------|
| 03-01<br>03-05 | 13 votes           |
| 03-14          | 12 votes           |
| 03-07          | 10 votes           |
| 03-12          | 6 votes            |
| 03-11          | 4 votes            |
| 03-06          | 3 votes            |
| 03-09          | 1 votes            |
| 03-08<br>03-13 | 0 votes            |

*Following discussion it was decided not to break the ties and to forward to the Arizona Judicial Council as priorities all ten of the proposals that were voted to include in the legislative package.*

**Integrated Family Court Committee ..... Mr. Phil Knox**

Ms. Nancy Gray Eade, Conciliation Court Services Director, Yuma County, provided a brief overview of the history leading up to the formation of the Integrated Family Court Workgroup (IFCW), established by the Domestic Relations Committee. Ms. Gray Eade explained pursuant to SB1088, the Workgroup's purpose was to prepare and submit a statewide plan for an Integrated Family Court to the legislature on or before December 31, 2002.

Ms. Gray Eades informed committee members that the IFC Workgroup consisted of 20 members and was broad based in its representation. There were judges, attorneys, psychologists, therapists, legislators, as well as juvenile and family court administrators from around the state included in the membership.

To prepare the final report, Ms. Gray Eade indicated research information was gathered from resources across the country. In addition to looking at programs outside the state, the Workgroup also looked at Maricopa's pilot program when developing a statewide plan for Arizona. A copy of the IFC Workgroup's report and recommendations were provided to members in their meeting materials. A revised draft was distributed to the committee at the meeting.

Following her overview, Ms. Gray Eade turned over the presentation to Mr. Phil Knox. Mr. Knox is the Family Court Administrator for Maricopa Superior Court. He is also a consultant for the state of California for their Integrated Family Court. In his presentation, Mr. Knox

focused members attention on the recommendations that came out of the IFC plan that would be moving forward as legislation for the state. In addition, he identified statutes that would be effected by any proposed legislation. Mr. Knox noted that in the workgroup's revised draft report the recommended implementation timelines had been extended to accommodate unanswered questions and afford time to explore potential funding sources. Members were informed to facilitate responses, the proposed plan, an executive summary and an opportunity to comment by means of a brief survey with a comment section, have been placed on the Internet at: [http://www.supreme.state.az.us/courtserv/IFC/IFC\\_Plan.htm](http://www.supreme.state.az.us/courtserv/IFC/IFC_Plan.htm).

Judge Kaufman questioned how the new locations of Maricopa County's Superior Court would fit into the IFC plan? Specifically, in an ideal situation, did the workgroup envision an integrated family court with judges in each location? Mr. Knox indicated the satellite court sites in Maricopa would actually afford the opportunity to address the issues of integrating better than it would if in a large centralized facility.

Judge Arellano, one of the judges involved in Maricopa's Family Court Pilot Program, provided a testimonial. She informed the committee while her cases in the Integrated Family Court may have taken a little bit more work than her cases would have otherwise required, the trade off for the family's involved in the system showed tremendous results.

**MOTION: Judge Arellano moved to support the recommendations of the IFC Workgroup. The motion was seconded.**

Following the motion, the floor was opened for discussion. The following is a summary of members' comments:

- < Judge Patricia Escher, Pima County: Expressed concern that the IFC plan did not appreciate the differences between counties- specifically, the logistical and budgetary impact of the proposal. Moreover, Judge Escher questioned whether philosophical issues, such as the degree to which juvenile law issues intersect with domestic relations issues and how best to handle these types of cases, had been adequately debated. While Judge Escher supports the principles recognized by the IFC workgroup (i.e., the one-judge/one-family, making courts accessible and responsive, etc.), she is opposed to the approach of a statewide plan and felt it would be more appropriate to leave this type of project planning at a county level. She felt more information was necessary to make an educated decision whether to support the proposal. However, if the committee decided to support the proposal, she felt that there should be an accent on those parts of the report that emphasize the need for individualized plans for each county. In addition, the committee should address the fact that there is no way to achieve the goals unless the state is willing to provide the necessary resources.
- < Judge Charles Harrington, Pima County: Judge Harrington indicated historically in Pima county there has been a reluctance by those on the bench to become involved in juvenile and domestic relations cases. Accordingly, he questioned whether the workgroup had determined, through either Maricopa's pilot program or other sources, if this type of project was indeed more or less attractive assignment to judges? He contended that in his experience this assignment would be less attractive to judges. Judge Harrington felt it was too important of a proposition to make a recommendation on until all members had adequately reviewed the report. Judge Harrington suggested the committee should revisit the issue at a later time.
- < Judge Nanette Warner: Judge Warner indicated she was a recent member of the IFC Workgroup and a strong supporter of the IFCW report. After briefly recapping the history of the workgroup and their charge, she suggested to members whether or not to implement

an IFC was no longer up for debate. Therefore, Judge Warner felt it was important to understand that under the IFCW plan each county would have the power to design their own program.

- < Judge Fred Newton: Judge Newton assured members that the IFC Workgroup was well represented by rural counties. Judge Newton affirmed that the IFC plan would also allow plenty of room for ingenuity and relied on each county determining what would work best in their county. He contended the IFC would not be a “cookie cutter court” rather, under the plan each county can assess their own strengths and resources to determine how to implement the minimum standards to be developed in the future by the Supreme Court. Judge Newton noted that the Workgroup did discuss at length the need to improve the judicial appointment process by recruiting and considering domestic relations attorneys for appointment to the bench so their predisposed interests could continue as an IFC judge. Judge Newton argued a commitment to the IFC was a commitment to a change in priorities in the court system. He supports the IFCW report and recommendations and ensuring families and children get more attention than they have had in the past by better trained judges.
- < Judge James Chavez: Judge Chavez felt the IFC plan would be exceptionally difficult to implement in Mohave county because of the way juvenile cases are handled. Currently, there are three Superior Court locations and although juveniles are handled in each of the locations, it is a part-time judge pro-tem who handles a portion of the juvenile cases. In addition, once a juvenile is placed in detention they are handled in the Kingman location. This would make it difficult to ensure a one-judge/one-family assignment.
- < Judge Bethany Hicks: Judge Hicks expressed her support of the IFC plan.
- < Judge Gloria Kindig: Judge Kindig feels the plan is a good idea. However, in Navajo County they only have three elected judges, therefore, in order to ensure cases are heard in a timely manner, Judge Kindig indicated much of their domestic relations work is assigned to a pro-tem. Navajo is also exploring using a pro-tem to handle juvenile cases. Therefore, the requirement to have 50% of the IFC cases heard by an elected judge could be problematic in Navajo.
- < Mr. Michael Jeanes: Mr. Jeanes indicated that from the Clerk’s Office and an administrative standpoint, the IFC pilot program did pose some significant challenges initially. However, all the parties worked together to get through them and consequently, it is now working well in Maricopa. Mr. Jeanes indicated his experience in working with committees on this topic has enlightened him to the different definitions and different ways other states have developed Family Courts which exemplifies how an IFC can be set up differently to meet the individual counties’ needs.
- < Judge Leslie Miller: Judge Miller felt the plan philosophically sounds great. Judge Miller acknowledged that DR attorneys are often discounted or overlooked when applying for judicial appointments because they are not trial attorneys. She felt the plan could establish the basis for appointing these well trained and well suited individuals to the IFC bench.
- < Sgt. Deborah Dyson: Ms. Dyson indicated from a law enforcement point of view she agrees that an IFC would be beneficial to families and supported the concept.
- < Mr. Marcus Reinkensmeyer: Mr. Reinkensmeyer indicated his support of the effort. He pointed out that Arizona is actually well positioned with the state’s current management information systems. He explained although it was a complex project to set up and they are still working out details and dealing with process improvements related to the court’s

re-engineering efforts. Moreover, Mr. Reinkensmeyer is optimistic as the court moves toward imaging and electronic document management that the sharing of information will improve. He informed members all Maricopa's implementation information is available for review, including the automation work that has been done.

- < Judge Sylvia Arellano: Judge Arellano reiterated her strong support of the IFC program.
- < Judge Mark Armstrong: Judge Armstrong is the chair of the Maricopa County Integrated Family Court Taskforce that put together the pilot program and is on the current statewide workgroup. In addition, he was also a member of the prior statewide committee that looked at IFC issues. He strongly supports the IFCW report and the concept of an integrated family court. He agrees there are a lot of differences between counties and, accordingly believes that each county needs a great deal of autonomy in terms of how they structure their program. He indicated the Workgroup did recognize this point although it may not be clear from the documents presented to the committee. Judge Armstrong cited three manifest benefits that would come with the concept of the IFC: 1) Judges would be trained in the full range of family related issues, 2) overlap in cases would be identified early and cases would be consolidated when appropriate and, 3) judges with interest and expertise in family law would be appointed to the IFC bench.
- < Judge Stephen McCarville: Judge McCarville indicated in Pinal County, judges cover all calendars. As a result, he has personally witnessed the interconnection between juvenile, dependency and domestic relation cases before the court. While he acknowledged that there were many good things that would come from an IFC system, Judge McCarville expressed concern that attorneys appointed to a dependency case, if consolidated with a dissolution action, may not have the experience to argue the property issues and child support issues. He contended that attorneys would also need to be educated to assist them with working in an IFC system.
- < Judge Brian Ishikawa: Judge Ishikawa indicated he has been on the Family Court bench for 2 ½ years and while he initially was a reluctant participant, recently he volunteered to stay on another year because of the support he received from the bench. He endorsed the need to recruit individuals with an interest in family law for the IFC and contended by placing an emphasis on this area of law it will garner more support for judges and their staff. Judge Ishikawa is a strong supporter of the IFCW report.
- < Mr. Marty Krizay: Mr. Krizay indicated he felt the IFCW plan was “the right thing to do for families.” He felt if the proposal could be implemented it would be a step in the right direction.
- < Judge Doug Holt: Judge Holt endorses the report 100% in concept but indicated the rural counties face extraordinary difficulties when trying to come with the resources to implement such a proposal. He argued even a “bare bones” application of the IFC proposal will be a problem for Graham County as he does not have the staff and other resources necessary to implement the plan.
- < Judge Raymond Weaver: Judge Weaver indicated he wanted more information before making a decision whether to support the IFCW report. He indicated in Yavapai County there is one judge that does not support the recommendations. Judge Weaver supports doing whatever can be done to keep a family together and alleviating obstacles in the process but is concerned with implementation issues.
- < Judge Kirby Kongable: Judge Kongable feels the IFC concept has a lot to offer. However, he indicated he is slow to come into total acceptance because of logistical concerns. Judge Kongable, like Judge McCarville, expressed his concern regarding attorney knowledge

being adequate to deal with IFC consolidated cases. He also agreed with Judge Newton that if the Court wants to effect long term systemic and generational change the focus does need to be placed on children and their families.

- < Commissioner Margaret Maxwell: Commissioner Maxwell indicated practitioners in Pima County have resisted the IFC concept for some time. Although she agrees with Judge Warner regarding the inevitability of the plan, her experience with IFCs has been different from those experienced in Hawaii or other states. She has seen IFCs being viewed as the “ugly step sisters” and not a distinguished part of the legal system. Moreover, Commissioner Maxwell contended domestic relations is not always just about families with children, therefore, services offered do not fit every domestic relations case. She argued there are many good programs that can be adapted in a lot of the counties and there was no need for a separate system. Commissioner Maxwell would prefer to see the programs brought into the existing program rather than creating a separate bureaucracy.
- < Judge Ken Lee: Supports Judge Escher’s comments. Nothing to add.

**MOTION:**      **In order to allow members additional time to review the report and supporting materials, it was recommended that the committee revisit the IFC proposal at their January 10, 2003 meeting. The motion was seconded and unanimously approved. COSC-02-016.**

**New Rule 1.7 of the Arizona Criminal Rules of Procedures ..... Mr. David Withey**

Mr. Dave Withey, Chief Counsel, AOC, explained to members that, as written, the proposed new rule would authorize the appointment of masters with the authority to conduct initial appearances (IAs) in criminal cases. He indicated the intent was to use masters only when no other options exist. In addition, these masters are not intended to undermine the duties of a pro-tem.

Judge Kindig indicated Navajo would like to expand the authority to include advisory hearings and questioned when the proposed rule would be implemented. Mr. Withey informed members the proposed new rule would be addressed at the upcoming rules meeting.

**MOTION:**      **It was moved to support the petition to adopt the proposed new rule authorizing the appointment of initial proceedings masters. The motion was seconded and unanimously approved. COSC-02-017.**

**Review of Letter to Judicial Ethics Advisory Committee ..... Hon. Fred Newton**

Judge Newton indicated the main concern was that Opinion #2001-01 was very restrictive regarding judges’ contact with juries after a verdict is returned. Judge Newton explained that many judges like to go to the jury room and greet the jurors, thank them for their service and, in some instances, ask them how they liked their jury experience and how it could be improved in the future. It was suggested that mandating attorneys be present and/or requiring the meeting be on the record, will have a detrimental effect on the exchange.

**ACTION ITEM:**      **Judge Escher agreed to communicate the Committee’s concerns to the Judicial Ethics Advisory Committee for consideration of further action.**

Judge Kaufman thanked Judge Escher for carrying this information forward.

**OTHER BUSINESS**

**Information Items ..... Ms. Theresa Barrett**

Ms. Barrett, AOC Staff to the Committee, informed members due to time constraints, all proposed code sections were bumped from the meeting agenda. Accordingly, she reminded members to review the proposed sections included in their meeting materials and to jot down their comments for AOC staff use. She informed members they could provide all comments to her and she would route them to the appropriate AOC staff member. She indicated that members' attention to these code sections was very important as they all would be reviewed by the Arizona Judicial Council before the Committee's next meeting.

**Next Meeting Date/Place ..... Hon. Roger Kaufman**

The next meeting will be held on Friday, January 10, 2003 at 10:00 a.m. The meeting location is the State Courts Building, 1501 W. Washington, Conference Rooms 345 A & B.

**Good of the Order/Call to the Public ..... Hon. Roger Kaufman**

No respondents.

**ADJOURNMENT**

The meeting was adjourned at 3:05 p.m.